

A GUIDE FOR STATE OF MONTANA EMPLOYEES AND MANAGERS



HARASSMENT IS AGAINST THE LAW

A Message From

Governor Brian Schweitzer

"I am proud to work for the State of Montana and I know you are too. We all deserve to work in an environment that provides the opportunity to do our job without fear or intimidation. I encourage all state employees to learn about their rights and responsibilities under the Civil Rights Act, the Montana Human Rights Act, and the State of Montana EEO-Nondiscrimination Policy. Sexual harassment will not be tolerated in state government. This is a great place to work, by knowing our rights and responsibilities we can make it even better."

A handwritten signature in black ink, which appears to read "Brian Schweitzer", is positioned above a solid black horizontal line that spans the width of the page.

Employees Have a Right to Work in an Environment Free of Harassment

It is the policy of Montana State Government as an employer:

- To provide state employees with a working environment free from discrimination and harassment;
- To communicate the state's Nondiscrimination-EEO program and reporting procedures to employees and supervisors;
- To recognize the unique nature of the complaints of sexual harassment and other forms of discriminatory harassment;
- To encourage early reporting by employees;
- To resolve complaints promptly, confidentially and at the lowest management level possible;
- To prohibit retaliation against any employee because he or she has made a report of alleged harassment or against any employee who has testified, assisted, or participated in any manner in investigating a report.

The Nondiscrimination-EEO Policy 3-0630 and the Nondiscrimination-EEO Guide are available at the State Human Resource Division website: <http://hr.mt.gov>.

Each agency is required to have an EEO officer, a posted EEO policy statement, and a posted complaint resolution procedure.

Sexual Harassment

The State of Montana prohibits sexual harassment of employees, customers, clients and any or all other persons. Sexual harassment is a form of sex discrimination and there are two types of sexual harassment:

Quid pro quo: Sexual favors are sought in return for job benefits or opportunities. It includes being forced to resign (constructive discharge). **Examples:** Unwelcome sexual advances are a term or condition of employment; the loss or threatened loss of a job for failing to comply with a supervisor's sexual demands, including situations that began as mutual attractions, but later ceased to be reciprocal; employment benefits affected in exchange for sexual favors (may include situations where a third party is treated less favorably because others have agreed to sexual advances).

Hostile working environment: Unwelcome sexual conduct that interferes with an employee's job performance or creates an intimidating, hostile, or offensive working environment. The key words are **unwelcome**, **unreasonable**, and **intimidating**, **hostile** or **offensive**. **Examples:** Displaying sexually suggestive objects, pictures,

cartoons or posters; verbal abuse of a sexual nature, sexually oriented jokes, innuendoes, or obscenities; or sexually suggestive letters, notes or invitations.

Harassment not involving sexual activity or language is also discriminatory if it is sufficiently patterned or pervasive and directed at employees because of their sex. This is **gender-based** harassment.

Other Harassment

The State of Montana's policy is to provide employees with a work environment free of these forms of harassment. Harassment of employees, clients, customers, and any other person doing business with state government because of a person's **race, color, national origin, age, physical or mental disability, marital status, religion, creed, sexual orientation or political beliefs** is prohibited.

Examples of other prohibited harassment include, but are not limited to: Coercion of employees, clients, or customers in the participation or non-participation in religious activities; or ethnic slurs, repeated jokes, innuendoes, or other verbal or physical conduct because of a person's nationality, race, color, age, physical or mental disability, marital status, religion, creed, sexual orientation or political beliefs if these actions create an intimidating, hostile or offensive working environment.

Agency Liability

Under federal and state discrimination law, agencies may be liable for monetary compensation and other forms of relief to employees who are victims of sexual harassment by:

- Supervisors, whether or not the agency knew of the sexual harassment;
- Co-workers and non-employees, when the agency knew or should have known of the sexual harassment in the workplace and failed to take immediate corrective action.

See the federal guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors: <http://www.eeoc.gov/policy/docs/harassment.html>.

Personal Liability

A harasser may be personally liable for damages to the victim of sexual harassment. Montana State Government does not cover an employee for damages or legal expenses when the employee has been found liable for sexual harassment. Moreover, a harasser's employment may be terminated.

What Managers Should Do

Prevention is the best method for eliminating harassment. The following steps will aid in preventing harassment:

- Make sure your agency's EEO policy statement and complaint resolution procedure are posted;
- Provide training for all employees on harassment prevention;
- Express strong disapproval of any harassing conduct in the workplace, including jokes, comments, gag gifts, and the posting of photos and written materials that may be offensive;
- Lead by example;
- Immediately investigate any report of harassment;
- Ensure there is no retaliation after an employee report harassment (retaliation is illegal);
- Take immediate, prompt, and effective corrective action upon determining that the harassment occurred;
- Encourage employees to report harassment immediately in accordance with your agency's policies;
- Inform employees of their right to report discrimination and harassment to the Montana Human Rights Bureau or the federal Equal Employment Opportunity Commission.

What Employees Should Do

If you are offended by jokes, comments, or other harassing conduct in your workplace, you should take the following steps as soon as possible:

- Make it known to the harasser in no uncertain terms that the behavior is unwelcome, or report the incident to your immediate supervisor or any other supervisor not involved. Reinforce your efforts with a follow-up note, and keep a copy as evidence.
- If the unwelcome behavior does not cease immediately, report the harassment to your EEO officer, another supervisor, or your agency director.

- Prepare and maintain written records of the dates, times, and facts of all harassment, and record the names of all witnesses and any other victims of the harasser.
- Obtain copies of any written materials regarding the quality of your work, to document a retaliatory, job-threatening action by a supervisor or co-worker.
- Document any physical or psychological problem resulting from the incident.
- Do not ignore the incident, resign your position, or believe that your agency will not consider your complaint to be serious.

If you are considering reporting a complaint, you can:

- Use your agency's complaint resolution procedure.
- File a complaint with the Human Rights Bureau, Department of Labor and Industry (PO Box 1728, Helena, MT 59624-1728, phone 1-800-542-0807). Complaints with the Human Rights Bureau will be accepted within 180 days of the discriminatory act, or extended up to 120 days if you file an internal complaint procedure.

If you are not personally a victim of discrimination but observe actions against other employees that you believe to be discrimination, you are encouraged to bring it to the attention of your EEO officer.

For more information, contact: your **agency Human Resource officer**.

Other resources include:

- State Human Resources at 444-3871;
- Professional Development Center at 444-3985; or
- Montana Human Rights Bureau at 444-2884 or Toll Free in Montana at 1-800-542-0807.

Prepared by the: Interagency Committee for Change by Women; State Human Resources Division, Department of Administration; and Human Rights Bureau, Department of Labor and Industry.

The Interagency Committee for Change by Women (ICCW) functions under an executive order to create positive change for all state employees by promoting the full participation of women in state government. For more information about the ICCW, visit: <http://www.mdt.mt.gov/iccw>.

NOTE: Alternative accessible formats of this brochure will be provided on request. Contact the State Personnel Division, 125 N. Roberts St., PO Box 200127, Helena, MT 59620-0127. Telephone 406-444-3871. Those using a TTY may call through the Montana Relay Service at 711.